



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

21 DUPONT CIRCLE, N.W., SUITE 700
WASHINGTON, D.C. 20036
202/659-5990 • 202/659-4619 (FAX)

November 20, 1995

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FEDERAL COMMUNICATIONS COMMISSION
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Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

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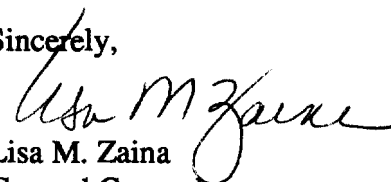
Re: Amendment of The Commission's
Rules and Policies to Increase
Subscribership and Usage of the
Public Switched Network
CC Docket No. 95-115

Dear Mr. Caton:

Please find enclosed for filing the original and nine copies of the Organization for the Protection and Advancement of Small Telephone Companies' reply comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,


Lisa M. Zaina
General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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OFFICE OF SECRETARY**

In the Matter of

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Amendment of The Commission's
Rules and Policies to Increase
Subscribership and Usage of the
Public Switched Network

CC Docket No. 95-115

**REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

**OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990**

November 20, 1995

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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**REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

I. INTRODUCTION

Many parties filed comments on September 27, 1995 in response to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking¹ regarding rules and policies to increase subscribership and usage of the public switched network and the continued success of its universal service policies. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) hereby submits its reply comments in response to the volume of comments concerning this topic.

¹In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, Notice of Proposed Rulemaking, CC Docket No. 95-115, FCC No. 95-281 (July 20, 1995). (NPRM)

II. TODAY'S SUBSCRIBER PENETRATION LEVELS HAVE BEEN MADE POSSIBLE BY A FIRM COMMITMENT TO UNIVERSAL SERVICE GOALS

In the NPRM, the Commission states that its "universal service policies have met with significant success."² OPASTCO members, with their efforts to build an advanced network and extend service in the most remote regions of the country, are an integral part of this success. As many commenters³ point out, this success would not be possible without key universal service mechanisms such as the Universal Service Fund (USF) and dial equipment minutes (DEM) weighting. Accordingly, as the Montana Independent Telephone Association declares, "we urge great caution in making sweeping changes to current programs" given "the level of subscribership that we have already achieved is so outstanding."⁴

It is no accident that the United States has the most advanced and reliable telecommunications infrastructure in the world. Federal policy, expertly executed by the FCC with an eye toward the public interest, along with the commitment of rural telephone companies, has created this enviable network. NTCA supports this contention when it states that the "existing subscribership levels are a testament to the success of universal

²NPRM at para. 1.

³Commenters include: Alaska Public Utilities Commission, Mid-Rivers Telephone Cooperative, Montana Independent Telephone Association, National Telephone Cooperative Association (NTCA).

⁴Montana Independent Telephone Association (MITA) comments at 3.

support mechanisms.”⁵ As OPASTCO and these commenters demonstrate, the USF and DEM weighting have led to the construction of vital telecommunications infrastructure in high-cost rural areas, leading to “a level of subscribership that is nothing short of remarkable in comparison with the rest of the world.”⁶ Of course, the Commission’s concern about some low levels of subscribership in the most rural of states⁷ demonstrates that, regardless of the success that has been achieved so far, there is still a strong public policy rationale to continue these successful programs in order to extend the network to reach these remote subscribers.

III. THE COMMISSION SHOULD CONTINUE TO EXAMINE SUCCESSFUL STATE UNIVERSAL SERVICE POLICIES

While many commenters supported continuing examination of state universal service policies, the overwhelming majority of commenters opposed the establishment of a federally mandated policy. The Commission was quite supportive of the Pennsylvania Public Utilities Commission (PPUC) policy of prohibiting disconnection of local service for nonpayment of toll charges.⁸ OPASTCO, in its comments also encouraged other states to follow the example set by Pennsylvania that has led to such high

⁵NTCA comments at ii.

⁶MITA comments at 2-3.

⁷NPRM at para. 40.

⁸NPRM at para. 11.

subscriberhip levels.⁹ However, as the majority of commenters, including the National Association of Regulatory and Utility Commissioners (NARUC), point out, "the FCC should adopt a collaborative approach to addressing the NPRM issues in a manner consistent with existing state initiatives and does not hamper state implementation of universal service policies."¹⁰ The National Exchange Carrier Association (NECA) echoes this sentiment when it states, "the Commission's further efforts to improve subscriberhip will also be best accomplished by working cooperatively with national telephone associations and with Joint Board participation by NARUC and state commissions."¹¹ Additionally, the Alaska Public Utilities Commission argues against a federal preemption mandate when it states that the FCC should "not assume that a policy that may have worked effectively in several, more urban, states will cure the low subscriberhip levels experienced in some of the more rural states."¹²

The majority of commenters opposed the Commission's proposal to preempt the states¹³, with many questioning the FCC's legal authority to do so. As the PPUC, which was used as a successful example in the NPRM, states, "it is not clear that FCC policies could be instituted without significant preemption of some state

⁹OPASTCO comments at 6.

¹⁰NARUC comments at 2.

¹¹NECA comments at 5.

¹²Alaska Public Utilities Commission comments at 1.

¹³NPRM at para. 53.

policies, a measure we oppose."¹⁴ The United States Telephone Association also states that there is "no basis for federal preemption mandates."¹⁵

The many legal questions in the comments are exemplified by the NYNEX statement, "indeed, the Commission's authority to preempt the states in this issue is questionable."¹⁶ The Ohio Public Utilities Commission (OPUC) also believes the "FCC lacks jurisdiction to prohibit LECs from disconnecting a local service for non-payment of either intrastate or interstate toll services."¹⁷ The Telephone Electronics Corporation (TEC) mentions that "the FCC has no authority...and has articulated no adequate policy reasons"¹⁸ for a nationwide mandate. Given the legal uncertainty and practical reasons for the states (rural and urban) to continue experimenting, "the Commission should continue to monitor and report on subscribership, but should not try to mandate solutions piecemeal and prematurely."¹⁹

IV. ADDITIONAL COMMENTS OF NOTE

USTA brought up some additional ideas and theories regarding subscribership that bear mentioning. USTA points out that many

¹⁴PPUC comments at 3.

¹⁵USTA comments at 16.

¹⁶NYNEX comments at 2.

¹⁷OPUC comments at 3.

¹⁸TEC comments at 2.

¹⁹TDS Telecom comments at 4.

states (usually urban) have penetration rates of about 95 percent.²⁰ Since the Commission states "that a 100 percent penetration level is not possible,"²¹ USTA argues that a 95 percent rate is "full penetration."²² Therefore, since there are many states with full penetration levels, a federal mandate is unnecessary.

The Commission asked about alternative, wireless possibilities in the NPRM to increase connections.²³ AT&T sums up the case for cellular in its comments when it explains that "current cellular technologies do not have the capability to replace traditional wired local exchange services."²⁴ Wireless facilities do not have the reliability, data-carrying capacity, or E911 capabilities to adequately replace wireline facilities. The USF and DEM weighting programs offer the high-cost support critical to the construction of reliable wireline connections in rural areas.

²⁰USTA comments at 16.

²¹NPRM at para. 17.

²²In the USTA comments at 16, USTA states that the remaining 5 percent not connected might be due to lack of financial resources, cultural differences, religion, convenient access to a phone outside of the home, and a possible preference for cable over a telephone.

²³NPRM at paras. 40-41.

²⁴AT&T comments at 17.

V. CONCLUSION

The construction of essential infrastructure is the first step to maintaining the country's "significant success" with universal service policies. The USF and DEM weighting programs properly target high-cost assistance to high-cost rural regions. Discussion of other proposals to increase subscribership is moot without these mechanisms that allow the infrastructure to be built in the first place. OPASTCO urges the Commission to continue to maintain the USF and DEM weighting programs if it truly wants to connect all citizens who desire an on-ramp to the national information infrastructure (NII).

OPASTCO supports the many state programs that keep subscribers connected to the network. The federal-state joint board model of collaborative cooperation has proven quite successful. As the most highly-connected state declares, "the Pennsylvania Public Utilities Commission supports a cooperative federal-state approach to universal service policies in the future."²⁵ The federal USF and DEM weighting mechanisms which

²⁵PPUC comments at 2.

help construct the network, combined with state efforts to connect subscribers, will ensure that all Americans, if they so choose, can connect to advanced telecommunications services at reasonable rates.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROTECTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES**

By: 12c. 41
Ken Johnson
Regulatory and
Legislative Analyst

By: LS-M Zaina
Lisa M. Zaina
General Counsel

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OPASTCO
21 Dupont Circle, NW
Washington, DC 20036
(202) 659-5990